

ESTATE OF MARCEL ARCASA
(Deceased Colville, Allottee No. H-120)

IBIA 74-3

Decided May 30, 1974

Petition to reopen.

Granted and remanded.

Indian Probate: Administrative Procedure Act: Applicability to Indian Probate

The requirement of the Administrative Procedure Act, that all decisions of an Examiner shall include a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, is mandatory and applicable in all decisions of Examiners in Indian Probate proceedings.

Indian Probate: Indian Reorganization Act of June 18, 1934: Construction of Section 4

The Indian Reorganization Act recognizes two classes of persons who may take testator's lands by devise, that is, any member of the tribe having jurisdiction over such lands and the legal heirs of the testator.

Indian Probate: Reopening: Generally

Although the superintendent of an Indian agency has no interest in the outcome he is a proper official of the Bureau of Indian Affairs to file a petition for reopening, under the authority of 43 CFR 4.242.

Indian Probate: Reopening: Waiver of Time Limitation

An Administrative Law Judge is without power to reopen a case after the

passage of three years from the date the Judge enters his order, but the Secretary is not bound by the limitations of 43 CFR 4.242 and he has the authority at any time to review on proper grounds.

APPEARANCES: Albert M. Rennie, Superintendent Flathead Agency, petitioner, pro se.

No appearance for appellees.

OPINION BY ADMINISTRATIVE JUDGE WILSON

The above-entitled matter comes before this Board on a petition to reopen dated July 2, 1973, filed by Albert M. Rennie, Superintendent Flathead Agency, Ronan, Montana.

An order was entered in the above-entitled matter on August 11, 1969, by Administrative Law Judge R. J. Montgomery, wherein he approved the last will and testament of Marcel Arcasa, hereinafter referred to as testator, dated July 27, 1953.

In paragraph SECOND of said last will and testament the testator devised his inherited interests on the Flathead Reservation, Montana, to his daughter, Marguerite Arcasa Lentz and his granddaughters, Marcella Grace Lentz and Josette Finley Lentz.

It is the foregoing devise to the granddaughters only which is the subject of the petition herein. The petitioner, although having no interest in the outcome, is a proper official of the Bureau of Indian Affairs to file a petition for reopening under the provisions of 43 CFR 4.242. Estate of Rose Josephine LaRose Wilson Eli, 2 IBIA 60, 80 I.D. 620 (1973).

In support of the petition to reopen the petitioner alleges.

1. The Order Approving Will, dated August 11, 1969, No. E-105-69, does not comply with the Indian Reorganization Act (25 U.S.C. 464). The Billings Area Title Plant, at my request, obtained for me the complete probate file, including family history and testimony verifying that Marcella Grace Lentz Redthunder and Josette Finley Lentz Osborne, granddaughters of the decedent, are not heirs at law. Neither are they enrolled members of the Confederated Salish and Kootenai Tribes. The complete probate file was received at Flathead Agency, April 10, 1973.

The Confederated Tribes of the Salish and Kootenai Tribes of the Flathead Reservation, Montana, voted to accept the provisions of the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 464). Accordingly, any devise of lands on that reservation would be subject to the provision of section 4 of said Act, supra, which in short prevents testamentary disposition of realty interests on an organized reservation to anyone who is neither an heir at law of the testator nor a member of the tribe having jurisdiction of the land in question. Solicitor's Opinion, 54 I.D. 584.

The Judge in his Order Approving Will, dated August 11, 1969, fails to make findings as to whether the grandchildren in question are eligible to take the Flathead interests under the will either as (1) heirs at law of the testator or (2) as enrolled members of the Flathead Reservation.

The Administrative Procedure Act, 5 U.S.C. § 551 et seq., makes it mandatory that all decisions of a Judge in Indian probate proceedings include a statement of findings and conclusions, on all material issues of fact, law or discretion presented on the record. Estate of Rose Joseph LaRose Wilson Eli, supra.

In view of the failure of the Judge to make the above-mentioned findings, the petition to reopen should be granted and the matter remanded to the Judge for further proceedings and disposition along the lines hereinafter indicated.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition to reopen is hereby GRANTED and the matter is hereby REMANDED to the Administrative Law Judge for the purpose of conducting, after due notice of reopening and hearing to all interested parties, a hearing to:

(1) determine whether the grandchildren in question are eligible to take the Flathead interests under the will either as heirs at law of the testator or as enrolled members of the Flathead tribes, and if not, (2) to determine the heirs, in accordance with Montana Laws of Intestate Succession (in the absence of a residuary devisee in the will of July 27, 1953), as to the lapsed Flathead interests devised to said grandchildren and (3) to issue an appropriate order or decision consistent with the evidence adduced in said hearing subject to the right of appeal set forth in 43 CFR 4.291.

Alexander H. Wilson
Administrative Judge

I concur:

David J. McKee
Chief Administrative Judge